

**Tentative Rulings for February 6, 2024**  
**Department 503**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG03629	S. C. v. County of Fresno is continued to Wednesday, April 10, 2024, at 3:30 p.m. in Department 503
23CECG02531	Courtney Marmolejo v. General Motors, LLC is continued to Wednesday, February 7, 2024, at 3:30 p.m. in Department 503
21CECG01552	Zapien v. Maciel is continued to Tuesday, February 27, 2024, at 3:30 p.m. in Department 503

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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 503**

Begin at the next page

(03)

**Tentative Ruling**

Re:

**Jaramillo v. TitleMax of California, Inc.**  
Superior Court Case No. 21CECG01529

Hearing Date:

February 6, 2024 (Dept. 503)

Motion:

Plaintiff's Motion for Sanctions

Defendant TitleMax's Application to Allow Carson M. Hinderks  
to Appear as Counsel Pro Hac Vice

**Tentative Ruling:**

To deny plaintiff's motion for sanctions against defendant.

To grant defendant TitleMax's application to allow Carson M. Hinderks to appear as counsel pro hac vice.

**Explanation:**

**Plaintiff's Motion for Sanctions:** First, plaintiff's motion is defective, since plaintiff never filed or served a notice of motion as required by California Rules of Court, rules 3.1110 and 3.1112. "A notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order." (Cal. Rules of Court, rule 3.1110(a)). The motion must also identify the party or parties bringing the motion; name the parties to whom it is addressed; briefly state the basis for the motion and the relief sought; and if a pleading is challenged, state the specific portion challenged. (Cal. Rules of Court, rule 3.1112(d).)

Here, the caption page of plaintiff's motion states the date, time and location of the hearing and states that plaintiff is seeking sanctions of \$18,694.02 as the prevailing party on defendant's motion for sanctions. However, plaintiff did not file or serve a separate notice of motion with a statement of the nature of the relief sought and grounds for issuance of the order. Nor does the motion identify the basis for relief sought. The attached memo of points and authorities does explain in more detail the relief being sought and the grounds for relief, but plaintiff nevertheless failed to comply with the Rules of Court regarding notices of motion.

In addition, plaintiff has failed to meet her burden of showing that the defendant's motion for sanctions was completely without merit or brought for an improper purpose. Under Code of Civil Procedure section 128.7, subdivision (h), "A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter that improper conduct or comparable conduct by others similarly situated." (Code Civ. Proc., § 128.7, subd. (h).)

"Section 128.7 applies only in limited circumstances. It 'authorizes trial courts to impose sanctions to check abuses in the filing of pleadings, petitions, written notices of motions or similar papers.' Under that authority, trial courts may issue sanctions, including monetary and terminating sanctions, against a party for filing a complaint that is legally or factually frivolous. 'A claim is factually frivolous if it is "not well grounded in fact" and is legally frivolous if it is "not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. A claim is objectively unreasonable if "any reasonable attorney would agree that [it] is totally and completely without merit.'" (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1120, citations omitted.)

" 'A court has broad discretion to impose sanctions if the moving party satisfies the elements of the sanctions statute.' Like its federal counterpart, however, rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.),<sup>8</sup> Code of Civil Procedure section 128.7 should be utilized only in 'the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose.' 'Because our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments, [section 128.7] sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous', and instead 'should be "made with restraint.'" Indeed, even if a plaintiff could not successfully defend against either demurrer or summary judgment, that alone is insufficient to support the sanction of dismissal. (*Ibid.*)' (*Id.* at pp. 1120–1121, citations omitted.)

"To avoid sanctions under section 128.7, 'the issue is not merely whether the party would prevail on the underlying factual or legal argument,' but rather whether any reasonable attorney would agree that the claim is totally and completely without merit. Hence, the evidentiary burden to escape sanctions under section 128.7 is light. [The opposing party] must make a sufficient evidentiary showing to demonstrate that he made a reasonable inquiry into the facts and entertained a good faith belief in the merits of the claim. [The opposing party] need not amass even enough evidence to create a triable issue of fact as would be required if [the moving party] had brought a motion for summary judgment, or allege a valid cause of action, as required to overcome a demurrer." (*Id.* at p. 1126, citations omitted.)

Here, plaintiff argues that defendant had no factual or legal basis for its motion for sanctions, so the court should grant sanctions against defendant for bringing the motion. However, it does appear that there was at least some factual basis for the motion, since defendant had a postmarked envelope that arguably suggested that plaintiff's counsel had mailed the request for pretrial discovery conference two days after the deadline for bringing the motion to compel had run. Defense counsel therefore had a good faith basis for bringing the motion. While the court ultimately decided that plaintiff's counsel had mailed the request in a timely manner and that the deadline had not yet expired, defendant's motion was supported by some evidence and thus was not completely without merit. As a result, plaintiff has not shown that defendant's motion was frivolous or unsupported by facts or law, and sanctions are not warranted here.

Finally, even if plaintiff had shown that defendant's motion was completely meritless, plaintiff's counsel has not presented any admissible evidence to support the request for over \$18,000 in sanctions. Plaintiff's counsel alleges in the memo of points and authorities that plaintiff expended \$18,694.02 in attorney's fees and costs to oppose the defendant's motion for sanctions. Counsel also alleges that five attorneys billed at rates of \$350 per hour to \$500 per hour on the case, and a legal assistant billed at the rate of \$125 per hour. Counsel further claims that they incurred \$292.99 in hotel costs and \$281.65 in mileage costs to travel from Woodland to appear at the hearing in Fresno.

However, counsel does not provide any evidence to support the assertion that plaintiff incurred \$18,000 in attorney's fees and costs. Unsworn statements in a memo of points and authorities are not evidence, and do not support the request for the specific amount requested here. Nor has plaintiff provided any information about the number of hours each attorney worked, the tasks they performed, or any other explanation for why the requested amount of sanctions is reasonable under the circumstances. Therefore, there is no evidentiary basis for plaintiff's request for over \$18,000 in attorney's fees and costs. As a result, the court will deny plaintiff's motion for sanctions.

**TitleMax's Application to Allow Carson M. Hinderks to Appear as Counsel Pro Hac Vice:**

Mr. Hinderks has submitted an application that complies with Rule 9.40, including providing all of the information required under Rule 9.40(d). He has also served notice on the California State Bar and paid the \$50 fee to the Bar. He will be appearing in association with a licensed California attorney, J. Jackson Waste. Therefore, the court intends to grant the application to allow Mr. Hinderks to appear as counsel pro hac vice in the action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** jyh **on** 2/5/24.  
(Judge's initials) (Date)

(27)

**Tentative Ruling**

Re: **Guadalupe Garcia Vidal v. Melina Perez**  
Superior Court Case No. 21CECG01720

Hearing Date: February 6, 2024 (Dept. 503)

Motion: Petition to Compromise the Claim of Minor

**Tentative Ruling:**

To grant. Orders Signed. No appearances necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** jyh **on** 2/5/24.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re:

***Higgins v. Gooch***

Superior Court Case No. 20CECG02931

Hearing Date:

**February 6, 2024 (Dept. 503) see below**

Motion:

Plaintiffs' Motion to Compel Defendant SWH Mimi's Café, LLC's Discovery Responses Set Three, Deem Matters Admitted, and Request for Sanctions

**Tentative Ruling:**

To continue to Thursday, February 29, 2024, at 3:30 p.m. in Department 503. Plaintiffs shall pay an additional motion fee of \$60.00 on or before February 15, 2024.

**Explanation:**

Plaintiffs scheduled only one motion that being a motion to deem requests for admissions admitted. However, it is clear from the moving papers that plaintiffs also seek to compel "Discovery Responses, Set Three"<sup>1</sup> in addition to deeming matter admitted. The court considers motions to compel separate types of discovery (e.g., form interrogatories, special interrogatories, requests for production of documents, requests for admissions) as separate motions, even if filed together in one set of moving papers, as here. Plaintiffs paid only one motion fee. If they wish to have the court rule as to the Form Interrogatories, as well, an additional motion fee must be paid.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** jyh **on** 2/5/24.  
(Judge's initials) (Date)

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<sup>1</sup> For future reference, the Notice of Motion should identify the type of discovery that is at issue on the motion (here, form interrogatories), and not just make a vague reference to "Discovery Requests" as they did here.

**Tentative Ruling**

Re:

**Jose Zendejas Rodriguez v. General Motors, LLC**  
Superior Court Case No. 23CECG01151

Hearing Date:

February 6, 2024 (Dept. 503)

Motion:

By Plaintiff Jose Zendejas Rodriguez to Compel Defendant General Motors' Person Most Qualified to Appear at Deposition

**Tentative Ruling:**

The hearing will go forward on this matter. Counsel for the parties are directed to appear to set a date for the deposition to take place within the next 30 days.

To grant monetary sanctions against defendant in the total amount of \$1,875. Monetary sanctions are ordered to be paid within 30 calendar days from the date of service of the minute order by the clerk.

**Explanation:**

On January 3, 2024, this motion was continued when the parties filed a joint statement indicating that they had agreed to schedule the deposition for on or before January 31, 2024. The court has not received an update from the parties and the matter was not taken off calendar.

**Objections**

The court overrules plaintiff's objections to paragraphs 5 and 8-12 of the Brar Declaration.

**Motion to Compel Attendance**

On April 25, 2023, plaintiff served a Notice of Deposition for General Motors' ("GM") Person Most Qualified ("PMQ") for May 23, 2023. (Sanjur-Van Brande Decl., ¶ 8 and Exh. 1.) On May 16, 2023, defendant served its objection. (Id. at ¶ 9 and Exh. 2.) On May 18, 2023, plaintiff's counsel left a voicemail for and emailed defense counsel inquiring about a mutually agreeable date for the deposition, agreeing to remove two categories of testimony, and proposing the parties stipulate to a protective order regarding production of GM's lemon law policy and procedure manual(s). (Id. at ¶ 10 and Exh. 3.) On May 22, 2023, plaintiff served the First Amended Notice of Deposition for June 12, 2023. (Id. at ¶ 11 and Exh. 4.) On Friday, June 9, 2023 at 5:35 p.m. plaintiff's counsel emailed defense counsel to confirm the deposition set for the following Monday. (Id. at ¶ 12 and Exh. 6.) At 11:41 p.m. defense counsel responded that the PMQ was unavailable. (Ibid.) On June 12, 2023 (**the day of the scheduled deposition**), defendant served its objection. (Id. at ¶ 12 and Exh. 5.) Plaintiff's counsel emailed defense counsel

the same day asking for a mutually agreeable date for the deposition. (Id. at ¶ 13 and Exh. 6.) In response, defense counsel asked when plaintiff was available for a deposition. (Ibid.) On June 19, 2023, plaintiff's counsel responded that plaintiff could be made available for a deposition, but requested that GM's PMQ's deposition occur first. (Ibid.) On June 20, 2023, plaintiff served the Second Amended Notice of Deposition for July 17, 2023. (Id. at ¶ 14 and Exh. 7.) On July 10, 2023, defendant served its objection. (Id. at ¶ 15 and Exh. 8.) On July 11, 2023, plaintiff's counsel left a voicemail and emailed defense counsel requesting mutually agreeable dates, noting the only issue appears to be about the date of the deposition as plaintiff had withdrawn previously disagreeable categories of testimony, and again proposed a stipulation to execute a protective order. (Id. at ¶ 16 and Exh. 9.) As of the filing of this motion on July 27, 2023, plaintiff had not received any offer of dates for the PMQ's deposition. (Id. at ¶ 21.) In defense counsel's declaration, there was no indication that defendant had provided any offer of agreeable dates for the PMQ's deposition. (See Declaration of Darshnik Brar.) According to the reply filed by plaintiff on December 26, 2023, defendant has yet to provide any dates for the PMQ's deposition.

Defendant's argument that plaintiff failed to engage in a meaningful meet and confer process is not well taken. Here, plaintiff's counsel was proactive in withdrawing categories of testimony and suggesting the protective order. Defense counsel has never responded to plaintiff's counsel's many requests to find a mutually agreeable date for the PMQ's deposition. Defendant's assertion that it has agreed to the deposition has no corresponding action behind it.

Code of Civil Procedure section 2025.280 provides, in relevant part: "The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action ... or employee of a party to attend and to testify ... as well as to produce any document ... for inspection and copying." (Code Civ. Proc., § 2025.280, subd. (a).) Code of Civil Procedure section 2025.450 provides, in relevant part:

If, after service of a deposition notice, a party to the action or employee of a party, or a person designated by an organization that is a party under Section 2025.230 ... without having served a valid objection under Section 2025.410, fails to appear for examination ... or to produce for inspection any document ... the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document ...

(Code Civ. Proc., § 2025.450, subd. (a).)

Here, the objection to the First Amended Notice of Deposition was untimely as it was served the day of the noticed deposition. Additionally, it appears that without the court's assistance, defendant will not work with plaintiff to find a mutually agreeable date for the deposition of the PMQ. As such, the court is ordering the parties to appear at the hearing in order to set a date for the PMQ's deposition.

It appears that the categories for testimony are not truly at issue here. Turning to the documents requested, it appears the issue is with request numbers 3, 5-6, and 9. These include the California lemon law policy and procedure manuals used by GM's dealers or authorized customer service representatives, writings provided to customer relations representatives regarding the policies and procedures for vehicle purchase refunds or replacements, TSB index and TSBs relating to the nonconformities alleged here, and the lemon law policy and procedure manual. Defendant argues that these are not relevant to plaintiff's subject vehicle and requests that if any of these are ordered to be produced, that they be subject to a protective order. The court would note that the parties have a protective order which was signed by the court on September 6, 2023. The documents at issue are relevant to whether defendant willfully failed to comply with the Song-Beverly Act. Documents must be produced in response to these requests. The parties are to comply with their protective order for documents which would be subject to it.

Lastly, sanctions are available where the court finds in favor of the moving party, unless there is substantial justification for the actions of the one subject to sanction. (Code Civ. Proc., § 2025.450, subd. (g).) GM's consistent objections and refusal to offer agreeable dates necessitated this motion. Otherwise, the cycle of notice and subsequent objection would not have ended. Plaintiff was substantially justified in bringing this motion considering the circumstances. Therefore, sanctions are appropriate in favor of plaintiff. The court is awarding sanctions for five hours of counsel's time at \$375 per hour, for a total of \$1,875.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** jyh **on** 2/5/24.  
(Judge's initials) (Date)